

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 DISH NETWORK L.L.C., et al., :
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 Plaintiffs, :
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 -against- :
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 ASIA TV USA LTD., et al., :
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 Defendants. :
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19-cv-0021 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

I am in receipt of the parties' joint statement regarding the preliminary injunction hearing scheduled for January 28, 2021, at 10:30 a.m., (the "Statement"). (Doc. 306.) I am also in receipt of the parties' letter, dated January 22, 2021, regarding the parties' positions on live testimony. (Doc. 308.)

In the Statement, Defendants request (1) that if the parties present live testimony, Plaintiffs be required to present Bradford Hammer, and if they do not, that his declaration be stricken or that the hearing be rescheduled for a later date to allow Defendants sufficient time to serve him with an appropriate subpoena to appear; (2) that proposed defense witness Leena Pawar be allowed to testify either live or by declaration; (3) that Defendants be permitted to introduce additional exhibits not listed in the Statement in order to refute the Jon Hageali declaration filed with Plaintiffs' reply; and (4) that Defendants be permitted to introduce additional exhibits not listed in the Statement in order to refute statements attributed to Mukund Cairae that are described in Michael Schwimmer's second declaration submitted with Plaintiffs' reply. (*Id.*)

As to Defendants' first request, because the parties have not yet agreed as to whether they intend to present live testimony, I find that a decision regarding Mr. Hammer's testimony is premature. This issue is held in abeyance until the parties indicate whether they will present live testimony.

Upon review, I find that Mr. Hageali's declaration introduces specific figures regarding advertising time provided to DISH that Defendants have not had a meaningful opportunity to address. (*See* Doc. 291, Hageali Decl. ¶¶ 4–7.) Defendants are permitted to submit a declaration from Ms. Pawar for the limited purpose of providing counter-figures that rebut the figures presented in Mr. Hageali's declaration. The statements in Ms. Pawar's declaration regarding these figures must be supported by documentary evidence, which is to be submitted with the declaration. The declaration may also reiterate Defendants' legal argument that the agreements at issue do not provide Plaintiffs with the advertising time that they claim; however, it cannot add any arguments that Defendants have not already made.

Finally, I find that the submission of additional exhibits regarding Mr. Cairae's statements that are described in Mr. Schwimmer's second declaration would not aid the Court in deciding Plaintiffs' preliminary injunction motion.

Accordingly, it is hereby

ORDERED that Defendants' request regarding the testimony of Mr. Hammer is held in abeyance until the parties indicate whether they intend to present live testimony.

IT IS FURTHER ORDERED that Defendants may submit Ms. Pawar's declaration and documentary evidence to support that declaration for the limited purpose that I describe above.

Defendants' request to submit exhibits not identified in the Statement for the purpose of refuting Mr. Cairae's statements that are described in Mr. Schwimmer's second declaration is

DENIED.

SO ORDERED.

Dated: January 25, 2021
New York, New York



Vernon S. Broderick
United States District Judge